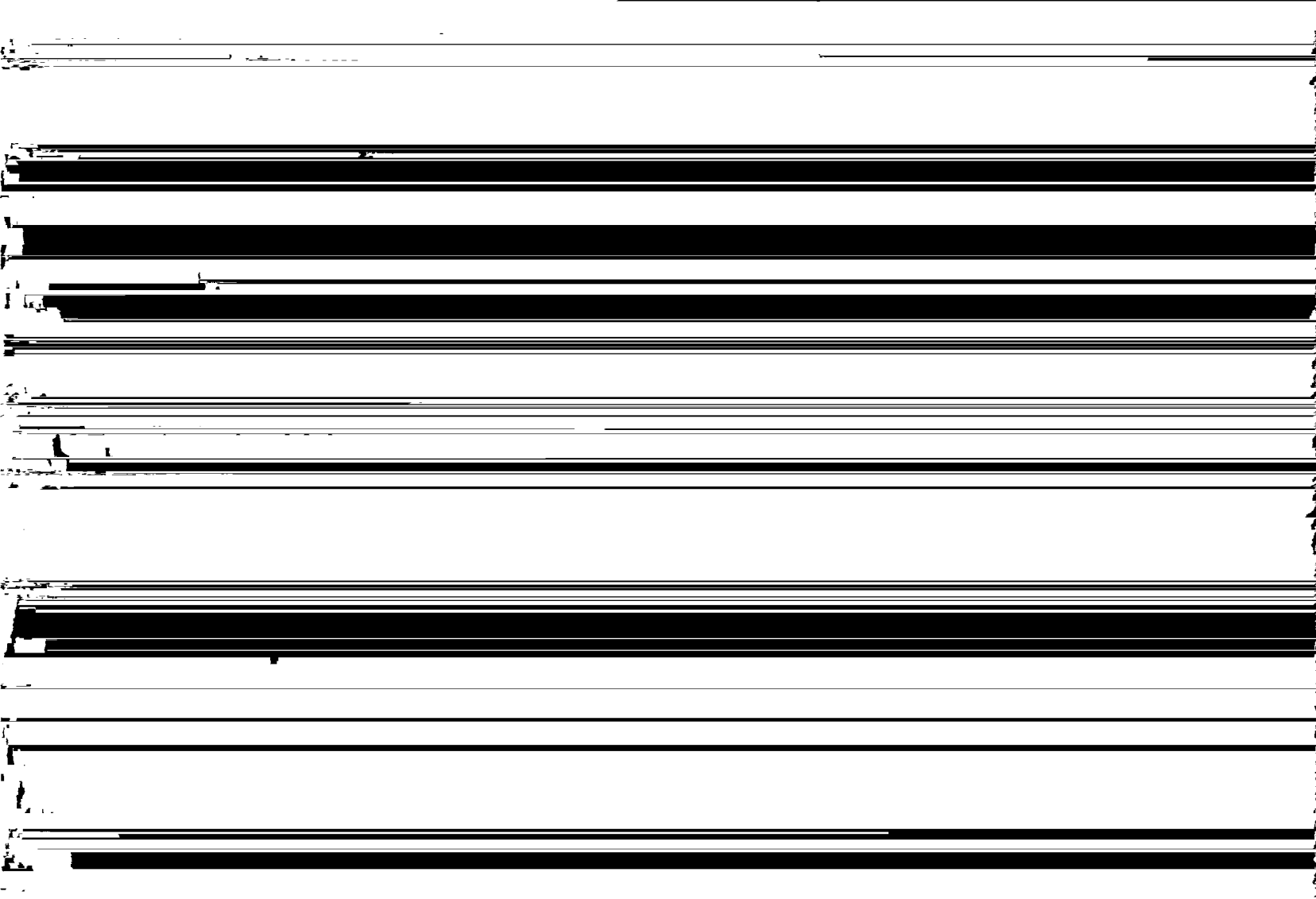


E. Congress Intended that the "Price or Rate" for Any Equipment or Installation "Used" to Receive Basic Service Be Established at "Actual Cost"

Contrary to the assertion of petitioners, Congress intended that the "price or rate"²⁵ for any equipment or installation "used" to receive basic cable service, and for cable service at additional outlets, be set at "actual cost." Section 623(b)(3).²⁶ The Conference Committee specifically amended Section 623(b)(3) to cover installation and equipment "used" to receive basic service, rather than installation and equipment "necessary" to receive such service (as proposed in the House bill), in order to "give[] the FCC greater authority to protect the interests of the consumer." H.R. Conf. Rep. No. 862,

²⁵ Local Governments disagree with petitioners who argue that the sale of equipment is not subject to rate regulation. See, e.g., Time Warner Petition at 20-21. Congress clearly intended for the Commission to regulate the "price or rate for installation and lease of the equipment used by subscribers to receive the basic service tier . . . and, if requested by the subscriber,

102d Cong., 2d Sess. 64 (1992). The 1992 Cable Act and its legislative history, thus, do not indicate an intent by Congress to subject cable equipment "used" to receive basic and other programming services to other than "actual cost" regulation under Section 623(b)(3).²⁷ In light of the clear statutory language and legislative history, Local Governments believe that the Commission is correct in subjecting equipment or installation "used" to receive the basic service tier to "actual cost" regulation, regardless of whether it is also used to receive any other programming service(s).²⁸



the statement that the Hamilton

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

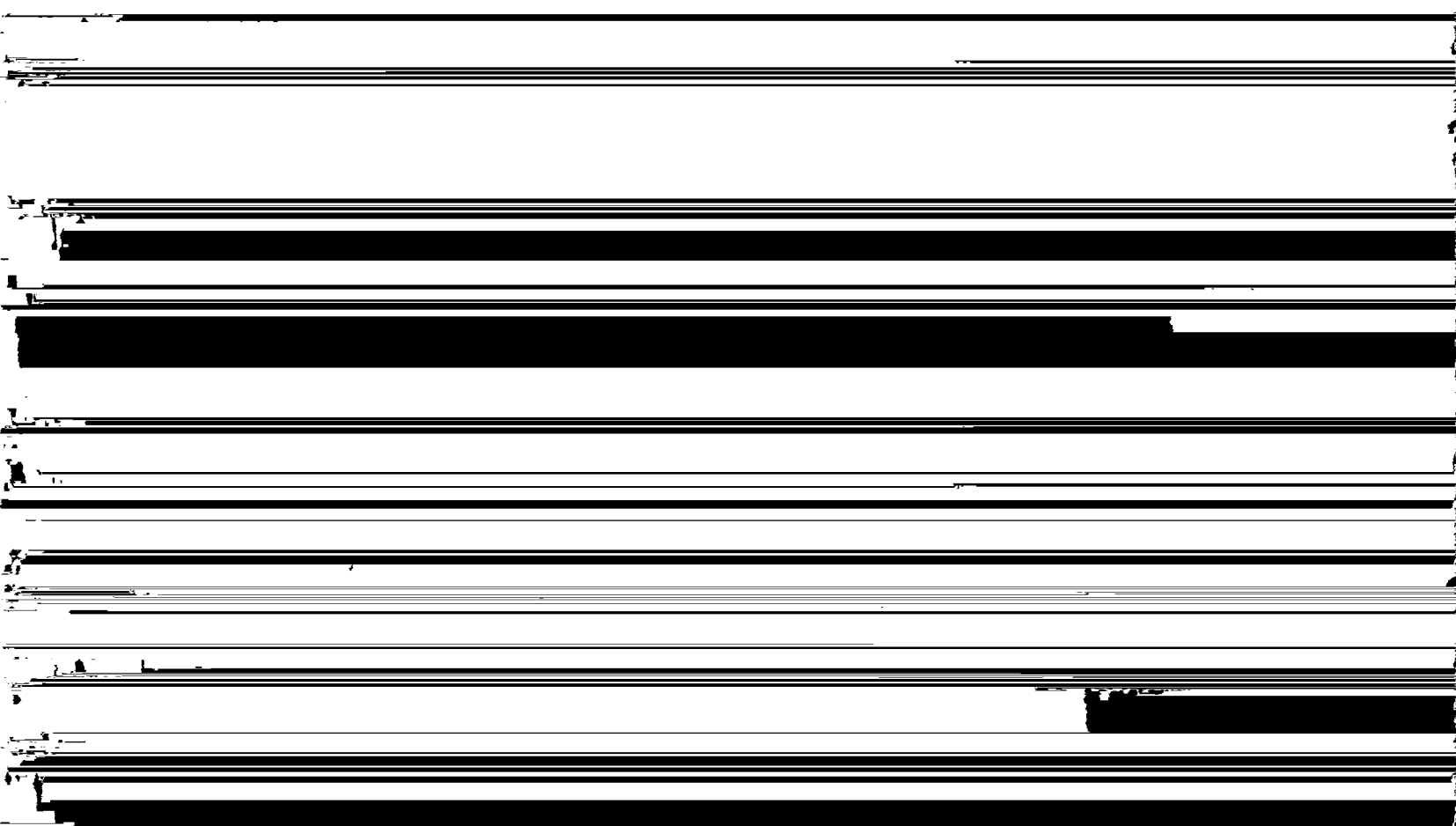
[REDACTED]

[REDACTED]

**G. Small Systems Serving 1,000 or Fewer
Subscribers from a Single Headend Must Be
Subject to the Commission's Substantive Rate
Requirements**

The Commission should not modify its small cable system exemption in a way that would include cable systems that serve more than one thousand subscribers from a single headend, and should not exclude any system meeting the small system exemption from the Commission's substantive rate regulations.³⁰

The Commission should ensure that only those cable systems that Congress intended to protect are granted small system exemptions. Section 623(i) clearly states that the small system exemption applies to "cable



systems be reasonable. Congress did not intend to leave cable subscribers to small systems unprotected from unreasonable rates resulting from the monopoly pricing practices of small systems. Rather, Congress simply instructed the Commission to reduce the burdens and costs of such compliance. To the extent that there is any merit in the argument of small systems that their higher costs justify higher rates, such concerns already have been taken into account in the Commission's benchmark charts, which vary based on the size of a system.

H. Cable Systems with Rates Below the Benchmark Rate Should not Be Permitted to Raise Rates to the Benchmark Rate

The Commission should reject petitioners' argument that cable operators that currently charge rates below that permitted by the benchmark rate charts be permitted to automatically raise them to the benchmark rate.³¹ The Commission has properly limited

³¹ See, e.g., Petition for Reconsideration of Newhouse Broadcasting Corporation, filed June 21, 1993, at 3-5.


Local Governments note that numerous petitioners challenge the Commission's benchmark rates, and method for calculating equipment and installation costs, on various grounds. If the Commission chooses to recalculate its benchmark rates and revise its method for determining equipment and installation rates based on these petitions, Local Governments urge the Commission to make any revisions consistent with the overriding purpose of eliminating monopoly profits in current cable rates, as intended by Congress.

the increase in such rates to increases permitted by the price cap rules. Local Governments agree with the Commission's conclusion that "[i]t is reasonable to assume in most cases that, whatever the rate an operator not subject to effective competition is charging for basic service, such a rate is not unreasonably low from that operator's perspective." Order at ¶ 232. Hence, since such a rate is deemed by the cable operator to be "reasonable," it is appropriate to subject increases in such a rate to price caps on a going-forward basis.

III. CONCLUSION

The Commission should consider the petitions in this proceeding consistent with the suggestions of Local Governments as outlined above.

Respectfully Submitted,



Norman M. Sinel
Patrick J. Grant
Stephanie M. Phillipps
William E. Cook, Jr.

ARNOLD & PORTER
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 872-6700

Counsel for the Local
Governments

July 21, 1993

CERTIFICATE OF SERVICE

I, William E. Cook, Jr., an attorney at Arnold & Porter, certify that copies of the foregoing Opposition of NATOA, et al. to Petitions for Reconsideration and Clarification were served by first class mail on this

J. Bruce Irving
Bailey, Hunt, Jones & Busto
Courvoisier Centre, Suite 300
501 Brickell Key Drive
Miami, FL 33131-2623
SUR CORPORATION

Jerry Parker
Director of Marketing
Superstar Connection
3801 S. Sheridan Road
Tulsa, OK 74145
SUPERSTAR CONNECTION

Judith L. Neustadter
Attorney at Law
2200 Main Street, Suite 611
P.O. Box 2252
Wailuku, Maui, Hawaii 96793
PARADISE TELEVISION NETWORK, INC.

Daniel L. Brenner
1724 Massachusetts Ave., N.W.
Washington, D.C. 20036
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

Nicholas P. Miller
Miller & Holbrooke
1225 19th Street, N.W.
Washington, D.C. 20036
KING COUNTY, WASHINGTON; AUSTIN, TX; DAYTON, OH, et al.

Ronald A. Siegel
Cohn and Marks
1333 New Hampshire Ave., N.W.
Washington, D.C. 20036
WOMETCO CABLE CORP., et al.

Richard E. Wiley
Woley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
VIACOM INTERNATIONAL INC.

Charles S. Walsh
Fleishman and Walsh
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
NEWHOUSE BROADCASTING CORPORATION

Stephen R. Effros
Community Antenna Television
Association, Inc.
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030-1005
THE COMMUNITY ANTENNA TELEVISION ASSOCIATION, INC.

Brenda L. Fox
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037
BOOTH AMERICAN COMPANY, et al.
COMCAST CABLE COMMUNICATIONS, INC.

John I. Davis
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
COLONY COMMUNICATIONS, INC., et al.

Aaron I. Fleischman
Fleischman and Walsh
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
TIME WARNER ENTERTAINMENT COMPANY, L.P.
ARIZONA CABLE TELEVISION ASSOCIATION, FALCOM CABLE TV,
et al.

Paul Glist
Cole, Raywid & Braverman
1919 Pennsylvania Ave., N.W.
Suite 200
Washington, D.C. 20006
CONTINENTAL CABLEVISION, INC.

Daniel L. Brenner
1724 Massachusetts Ave., N.W.
Washington, D.C. 20036
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

John W. Pestle, Esq.
Varnum, Riddering, Schmidt & Howlett
333 Bridge Street, N.W.
P.O. Box 352
Grand Rapids, MI 45901
MICHIGAN C-TEC COMMUNITIES

Charlotte J. Robak
Chairman of the Board
13100 Alondra Blvd.
Suite 104
Cerritos, CA 90701
APOLLO CABLEVISION INCORPORATED

Howard J. Symons
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004
CABLEVISION SYSTEMS CORPORATION

Ron D. Katznelson, Ph.D.
President
5910 Pacific Center Blvd.
San Diego CA 92121
MULTICHANNEL COMMUNICATION
SCIENCES, INC.

Mark J. Palchick
Baraff, Koerner, Olender
& Hochberg, P.C.
5335 Wisconsin Ave., N.W.
Washington, D.C. 20015
FAIRMONT CABLE TV
TKR CABLE COMPANY

David M. Silverman
Cole, Raywid & Braverman
1919 Pennsylvania Ave., N.W.
Suite 200
Washington, D.C. 20006
BLACK ENTERTAINMENT
TELEVISION, INC.

David B. Gluck
600 Las Colinas Boulevard
Suite 2200
Irving, TX 75039
AFFILIATED REGIONAL
COMMUNICATIONS, LTD.

Henry A. Solomon
Haley, Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-1633
COMMUNITY BROADCASTERS
ASSOCIATION

Eric E. Breisach
Howard & Howard Attorneys, P.C.
107 W. Michigan Avenue
Suite 400
Kalamazoo, MI 49007
HIGGINS LAKE CABLE, INC.

Paul J. Berman
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20044
LONGVIEW CABLE TELEVISION CO.,
INC.

Gardner F. Gillespie
Hogan & Hartson
555 13th Street, N.W.
Washington, D.C. 20004
HARRON COMMUNICATIONS CORP.
COALITION OF SMALL SYSTEM OPERATORS

Robert L. Hoegle
Carter, Ledyard & Milburn
1350 I Street, N.W.
Suite 870
Washington, D.C. 20005
LIBERTY MEDIA CORPORATION

Frank W. Lloyd
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004
CALIFORNIA CABLE TELEVISION
ASSOCIATION

Lex J. Smith
Brown & Bain, P.A.
2901 North Central Avenue
Post Office Box 400
Phoenix, AZ 85001-0400
CENTURY COMMUNICATIONS, INC.

Roy A. Sheppard
President
CABLE SERVICES
308 - 2nd Street, N.W.
Box 608
Jamestown, ND 58402-0608

Michael E. Glover
1710 H Street, N.W.
Washington, D.C. 20006
BELL ATLANTIC TELEPHONE COMPANIES

Sharon L. Webber
Citizens Communications Center
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
CME, et al.

J. Dale Haslett
ALSEA RIVER CABLE TV
P. O. Box 386
Waldport, OR 97394

James E. Meyers
Baraff, Koerner, Olender & Hochberg, P.C.
5335 Wisconsin Ave., N.W., Suite 300
Washington, D.C. 20015-2003
ENCORE MEDIA CORPORATION

Trudi McCollum Foushee
Vice President - Legal
One Galleria Tower
13355 Noel Road, Suite 1650
Dallas, TX 75240
CROWN MEDIA, INC.

Matthew L. Leibowitz
Leibowitz & Spencer
One S.E. Third Avenue
Suite 1450
Miami, FL 33131
VIDEO JUKEBOX NETWORK, INC.

Stephen R. Ross
Ross & Hardies
888 16th Street, N.W.
Suite 300
Washington, D.C. 20006
INTERMEDIA PARTNERS


Diane S. Killory
Morrison & Foerster
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, D.C. 20006
THE DISNEY CHANNEL

Richard E. Wiley
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
CORNING INCORPORATED SCIENTIFIC-ATLANTIC, INC.
DISCOVERY COMMUNICATIONS, INC.

Peter Tannenwald
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
INLAND BAY CABLE TV ASSOCIATES

Robert Weisberg, President
MOUNTAIN CABLEVISION, INC.
145 E. 92 Street (PHA)
New York, NY 10128

William Leventer
President
VIDEO DATA SYSTEMS
653 Old Willets Path
Hauppauge, NY 11788


William E. Cook, Jr.